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P O Box 1582, Mount Vernon, IL 62864

[www.wispa.org](http://www.wispa.org)

866-317-2851

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December 10, 2010

*Via ECFS*

Julius Genachowski, Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: *Written Ex Parte Presentation*  
*GN Docket No. 09-191 and WC Docket No. 07-52*

Dear Chairman Genachowski:

The Wireless Internet Service Providers Association (“WISPA”) writes to emphasize its concerns over “Open Internet” rules that, if adopted, could severely diminish the ability of millions of consumers to receive *fixed wireless* broadband services. Fixed wireless networks have unique characteristics, constraints and bandwidth limitations. For these reasons, it would be ill-advised to impose on *fixed wireless* Internet service providers (“WISPs”) the same regulations imposed on cable modem, DSL and other fixed-wire providers. To the extent the Commission adopts “Open Internet” regulations, WISPA urges the Commission to exempt fixed wireless broadband providers from certain of the requirements (as it appears the Commission will do for mobile wireless providers) in recognition of the bandwidth limitations imposed upon fixed wireless broadband networks by the laws of physics and the amount of available spectrum. Failure to do would have devastating consequences for millions of consumers – many residing in rural areas where there is little or no choice of broadband providers – who would experience higher costs, slower speeds and, perhaps, unavailability of service.

WISPA was founded in 2004, and its rapidly growing membership consists of more than 400 WISPs, vendors, system integrators and others interested in promoting the growth and delivery of fixed wireless broadband services to Americans. WISPA estimates that more than 2,000 WISPs operate in the United States today, providing fixed wireless broadband service to more than 2,000,000 people in residences, businesses, hospitals, public safety locations and educational facilities. WISPs primarily rely on 900 MHz, 2.4 GHz and 5 GHz license-free frequencies authorized under Part 15 of the Commission’s Rules, as well as the licensed-lite 3650-3700 MHz band. While there is no “typical” WISP, many WISPs operate small systems consisting of a few hundred subscribers. In many cases, especially in small and rural communities, the local WISP is the *only* source of broadband service – wired plant cannot be cost-effectively deployed to these remote communities.

Most WISPs are small businesses that provide many other small businesses with broadband internet in the communities they typically serve. In signing the Small Business Jobs Act, President Obama acknowledged the role that small businesses play in contributing to the country's economic recovery and well-being, stating that:

This is important because small businesses produce most of the new jobs in this country. They are the anchors of our Main Streets. They are part of the promise of America – the idea that if you've got a dream and you're willing to work hard, you can succeed. That's what leads a worker to leave a job to become her own boss. That's what propels a basement inventor to sell a new product, or an amateur chef to open a restaurant. It's this promise that has drawn millions to our shores and made our economy the envy of the world.<sup>1</sup>

WISPs juggle the daily challenges of managing networks of multiple unlicensed frequency bands with minimal amounts of available spectrum, congested and noisy RF environments, limited access to affordable middle-mile facilities and ever-increasing consumer demand for bandwidth-intensive downloads. While every ISP must make network management decisions, WISPs function, in many respects, much more like mobile wireless networks than wired broadband networks. Thus, *the Commission should not impose on fixed wireless broadband providers the same rules it imposes on other fixed broadband providers*. Rather, the Commission should treat fixed wireless broadband providers similarly to the way mobile wireless broadband providers will be treated given that the same (and in many cases, even more severe) technical and over-the-air spectrum limits apply to fixed wireless broadband providers as apply to mobile broadband providers.

In the Notice of Proposed Rulemaking, the Commission correctly acknowledged that “[w]hat constitutes congestion, and what measures are reasonable to address it, may vary depending on the technology platform.”<sup>2</sup> That said, the fundamental differences between *fixed wireless* and other fixed platforms require a clear recognition that fixed wireless broadband providers should have greater flexibility to address problems unique to them, including:

- the potential for interference from other fixed wireless networks and unlicensed devices, and increasing incidence of congestion and “noise”;
- the limited amount of bandwidth available, and the inability to sustain a business model in sparsely populated areas if licensed spectrum were required to be purchased at auction;
- limited access to affordable high-bandwidth middle-mile facilities, especially in rural and remote areas of the country;
- different propagation characteristics of the various bands;

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<sup>1</sup> News Release, Remarks by the President at Signing of the Small Business Jobs Act (rel. Sept. 27, 2010) (available at <http://m.whitehouse.gov/the-press-office/2010/09/27/remarks-president-signing-small-business-jobs-act>).

<sup>2</sup> *In the Matter of Preserving the Open Internet; Broadband Industry Practices*, Notice of Proposed Rulemaking, GN Docket No. 09-191 and WC Docket No. 07-52, rel. Oct. 22, 2009 (“NPRM”).

- the lack of alternative broadband providers in certain areas of the country;
- limited access to capital to add bandwidth, towers, access points and other techniques that could increase throughput and capacity; and
- the desire of consumers to download more and more content and applications on capacity-constrained networks limited by the above-listed network restrictions.

In its Comments in this proceeding,<sup>3</sup> WISPA recommended that if the Commission adopts “Open Internet” regulations, it should do so with an understanding of the limitations of WISP *fixed wireless* broadband networks. WISPA proposed a set of network management practices that would be deemed *per se* “reasonable,” thus enabling providers of *fixed wireless* broadband services to:

- temporarily limit bandwidth available to users that are using substantially disproportionate amount of bandwidth compared to – and to the detriment of – others;
- establish service levels so that those subscribers who desire to use more bandwidth or are willing to pay an additional fee more bandwidth can be free to do so;
- provide subscribers with the option to pay for service based on access time or consumption level (*e.g.*, subscribers could pay for service for each minute they are logged in and/or the total number of packets that they upload/download); and
- provide subscribers with the option to pay different rates for accessing the service at “peak” times or non-peak times, thereby incentivizing a subscriber to pay a reduced fee if it reduced congestion by downloading bandwidth-intensive content and applications during non-peak times.

These guidelines would not be exclusive but would be a starting point in establishing network management practices that would allow *fixed wireless* broadband providers to effectively manage and to share their available bandwidth with as many customers as possible.

Relaxing “Open Internet” requirements for fixed wireless broadband providers would be consistent with the Small Business Job Act by preserving jobs and, as WISPs and technology providers innovate, creating new jobs. To the contrary, subjecting fixed wireless broadband providers to more onerous regulations would not only devastate the small businesses providing the broadband services but would also devastate the many small business customers that have few, if any, broadband options in our present society.

In crafting rules, the Commission must acknowledge the unique nature and finite bandwidth-delivery capacity of *fixed wireless* broadband networks. Certain requirements that

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<sup>3</sup> Comments of the Wireless Internet Service Providers Association, GN Docket No. 09-191 and WC Docket No. 07-52, filed January 14, 2010 (“WISPA Comments”).

may be appropriate for other fixed broadband technologies are inappropriate and should not apply to providers of *fixed wireless* broadband services. Rather, any “Open Internet” rules imposed on *fixed wireless* broadband providers should be akin to those the Commission may establish for mobile wireless broadband providers in light of their similar circumstances.

Pursuant to Section 1.1206, this written ex parte presentation is being electronically filed via ECFS.

Respectfully submitted,

/s/ Jack Unger

Jack Unger  
Chair, WISPA FCC Committee  
(818) 227-4220

/s/ Elizabeth Bowles

Elizabeth Bowles  
President, WISPA  
(501) 374-4638